



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 665

IN THE MATTER OF ROBERT COMISKEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Robert Comiskey pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 30, 2002, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Comiskey. The Commission has concluded its inquiry and, on September 5, 2002, found reasonable cause to believe that Comiskey violated G.L. c. 268A, §23(b)(2).

The Commission and Comiskey now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Comiskey served as the Dover ambulance squad administrator from 1975, when the position was created, until his resignation in June 2001.
2. Comiskey, his wife and son served as emergency medical technicians ("EMTs") on the ambulance squad, earning an hourly wage of approximately \$14.00.
3. EMTs are required to attend 28 hours of additional training sessions every two years to maintain certification. 105 CMR 170.
4. As ambulance squad administrator, Comiskey was responsible for approving and submitting to the state Office of Emergency Management Services ("OEMS") the attendance rosters for Dover's EMT training sessions. The OEMS requires the rosters as proof that EMTs are attending training sessions necessary for them to maintain certification. The OEMS-issued rosters require the EMTs to list their EMT identification numbers and to print and sign their names. EMTs are paid their prevailing hourly wage for attending the training sessions, which average three hours in length and occur six to eight times per year.

5. Between 1996 and 2001, Comiskey certified that he, his wife and son attended certain training sessions although they had not. As a result, all three received attendance credit for training sessions they did not attend. In addition, the parties received the following compensation for training sessions they did not attend: Comiskey, \$323.14; wife, \$444.73; and son, \$86.52.

6. It is unclear whether Comiskey, his wife and son attended sufficient training sessions to maintain their certifications.

7. Following an investigation by OEMS, Comiskey surrendered his EMT license and resigned as ambulance squad administrator in June 2001.

-Conclusions of Law-

8. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

9. As the Dover ambulance squad administrator, Comiskey was, during the relevant period, a municipal employee as that term is defined in G.L. c. 268A, §1.

10. Comiskey used his position as ambulance squad administrator by, in his official capacity, certifying to the OEMS that he, his wife and son attended training sessions for which they received attendance credit and compensation for their purported attendance.

11. Securing training session attendance credit and compensation for such non-attendance were special benefits and, as such, privileges.

12. The receipt of training session credits was a privilege of intangible substantial value as they are required for EMTs to maintain certification. The payments received for training sessions not attended were privileges of substantial value individually (\$323.14; \$444.73; and \$86.52 to Comiskey, his wife, and son, respectively) and in the aggregate (\$854.39 total).

13. Comiskey and his family members' receipt of training session attendance credit and compensation was unwarranted because they had not, in fact, attended the EMT training sessions.

14. The privilege of receiving training session attendance credit and compensation for sessions not attended was not otherwise properly available to similarly situated individuals.

15. Therefore, by falsely certifying to the OEMS that he, his wife and son attended training sessions thereby enabling him, his wife and his son to improperly obtain training credits and compensation for sessions they did not attend, Comiskey used his position to secure for

himself and his family members unwarranted privileges of substantial value that were not properly available to similarly situated individuals, violating §23(b)(2).¹

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Comiskey, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Comiskey:

- (1) that Comiskey pay to the Commission the sum of \$5,000.00² as a civil penalty for his conduct in violating G.L. c. 268A, §23(b)(2);
- (2) that he reimburse the Town of Dover the sum of \$854.39, forthwith; and
- (3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

Dated: September 12, 2002

¹ Comiskey's actions also raise concerns under 19 and 23(b)(3) of G.L. c. 268A. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he or an immediate family member has a financial interest. General Laws, c. 268A, 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. As a matter of enforcement discretion, the Commission decided to resolve this matter under 23(b)(2) to emphasize that the most serious aspect of the conduct described involved the abuse of public position for private gain.

² The Commission is empowered to impose a fine of up to \$2,000 for each violation of the conflict of interest law. The size of the fine in this disposition agreement reflects the seriousness of the conduct and the potential harm to public health and safety.